

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

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| AMARILLO MEDICAL SPECIALISTS, | § | |
| LLP, <i>et al.</i> , | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | 2:23-CV-026-Z-BR |
| | § | |
| AKOS MD IPA, LLC, <i>et al.</i> , | § | |
| | § | |
| Defendants. | § | |

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION TO
ORDER PLAINTIFFS AND CROSS CLAIMANT TO SEEK ENTRY OF DEFAULT
AND TO MOVE FOR DEFAULT JUDGMENT**

This case was referred to the undersigned United States Magistrate Judge for pretrial management under 28 U.S.C. § 636(b) and a Standing Order of Reference from United States District Judge Matthew J. Kacsmayk. (ECF 8).

I. BACKGROUND

On January 13, 2023, Plaintiffs filed their Complaint against Defendants in the 251st District Court in and for Potter County, Texas. (ECF 1). Defendant Genuine Health Group, LLC (“GHG”) removed the case to this Court on February 21, 2023. (*Id.*). The attachments to the Notice of Removal indicate that Defendant AKOS MD IPA, LLC (“AKOS”) was served with a copy of the Plaintiffs’ original petition on January 19, 2023.¹ (*Id.* at 11). They also indicate that AKOS consented to the removal by its representative’s signature on February 20, 2023. (*Id.* at 16). AKOS did not file an answer or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days of service (*i.e.*, on or before February 9, 2023). *See* Fed. R. Civ. P. 12(a)(1)(A)(i), (b).

¹ While the Court notes that the docket reflects that service was effectuated, the undersigned makes no finding as to whether service was properly effectuated.

More than ninety days have now passed since February 9, 2023. As of the date of this Findings, Conclusions, and Recommendation, AKOS has not entered an appearance in this lawsuit.

On August 2, 2023, with leave of the Court, GHG asserted a crossclaim against AKOS. (ECF 40). On October 11, 2023, GHG moved the Court for leave to serve AKOS pursuant to Texas Rule of Civil Procedure 106 by posting of process on the door of Kishlay Anand, AKOS's Statutory Agent, whose residence is located at 6223 E. Via Estrella Avenue, Paradise Valley, Arizona 85253. (ECF 47). The Court granted that motion, (ECF 52), and the docket shows that service was effected on October 14, 2023. (ECF 53). AKOS did not file an answer or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days of service (*i.e.*, on or before November 4, 2023). More than ninety days have now passed since November 4, 2023. To reiterate, as of the date of this Findings, Conclusions, and Recommendation, AKOS has not entered an appearance in this lawsuit.

II. ANALYSIS AND RECOMMENDATION

The record reflects that Defendant and Cross Defendant AKOS has been in default for a period in excess of 90 days. The Local Rules authorize the presiding judge to require a plaintiff to seek entry of default and/or default judgment as to any defendant who has been in default for 90 days. *See* N.D. Tex. Civ. R. 55.1 (“If a defendant has been in default for 90 days, the presiding judge may require the plaintiff to move for entry of a default and a default judgment. If the plaintiff fails to do so within the prescribed time, the presiding judge will dismiss the action, without prejudice, as to that defendant.”); *see also* N.D. Tex. Civ. R. 1.1(b) (“The term ‘presiding judge’ means the judge to whom a case is assigned. The word ‘judge’ includes district judges and magistrate judges.”).

Accordingly, it is the RECOMMENDATION of the United States Magistrate Judge that the United States District Judge ORDER Plaintiffs and Cross Claimant GHG each to (1) seek entry

of default by the United States District Clerk and (2) move for default judgment against Defendant and Cross Defendant AKOS MD IPA, LLC within fifteen days of the Court entering an order accepting this Findings, Conclusions, and Recommendation, if the Court enters such order. *See* Fed. R. Civ. P. 55(a)–(b); N.D. Tex. Civ. R. 55.1, 55.3.

IV. INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of these Findings, Conclusions, and Recommendation to each party by the most efficient means available.

IT IS SO ORDERED.

ENTERED September 10, 2024.



LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE